which the learned District Judge could have found "grievous bodily harm" in the sense in which that expression is understood in England but there is, however, no entire coincidence between "grievous bodily harm" in England and "grievous hurt" as defined in our Penal Code. Further, there was no evidence at all from the lady doctor or elsewhere to substantiate grievous hurt in this sense. In passing I might add that although there was some reference by witnesses to an "operation" nobody was called from the surgical unit to give evidence about it.

I have also considered whether this failure to produce the X-ray photograph can be excused on the ground that no objection was taken in the Court below to its non-production but it is clear that inadmissible evidence cannot be rendered admissible, contrary to the rules of evidence, merely because no objection is taken. It is the duty of the prosecution to prove its case strictly and it is well-known that even admissions of facts like these will not suffice in a criminal trial. There was, of course, no such admission.

The only other ground of appeal to which I think I ought to refer is the ground which complains that the learned District Judge did not consider the defence of provocation. Having regard to the finding of fact on the case as a whole, with which I see no reason to disagree, that the appellant was the aggressor, it is difficult to see how the defence of provocation could have succeeded. The learned District Judge considered the appellant's story and rejected it entirely. Having rejected the story that the complainant attacked him first there was little or nothing left on which a defence of provocation could possibly have been based. In any case provocation does not excuse the offence entirely. It is a mitigating factor and a special punishment is provided where the facts prove grave and sudden provocation.

In all the circumstances I am of the opinion that there was sufficient evidence to justify a conviction for the lesser offence of voluntarily causing simple hurt under section 323 of the Penal Code. The facts, but for the technical objection sustained, show a serious assault albeit not the offence as charged.

I would therefore substitute a conviction accordingly and alter the sentence to a fine of $500 or 3 months' imprisonment in default.

*Order accordingly.*

Solicitors:—*Elias Bros.*

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## ABU BAKAR v. REGINA

**[A.Cr.J. (Winslow J.) June 27, 1963]**

**[Singapore — Magistrate's Appeal No. 176 of 1962]**

*Criminal Law—Bribery and corruption—Prevention of Corruption Ordinance, 1960, s.6—Admission by defence of receipt of money but only as a commission in a sale—"Corroboration" of defence story.*

*Criminal Evidence—Failure by defence to produce material witness—Whether unfavourable inference to be drawn—Evidence Ordinance, s.115.*

The appellant, a police officer was convicted for corruptly obtaining $20 as a reward for forbearing to take action against one Tan Geok Leng who had been riding a motor-scooter without "L" plates whilst holding a provisional licence. The appellant admitted receiving the $20 but said it was commission for having found a buyer for the motor-scooter alleged by him to belong to one Tan Hong Seng.

The learned District Judge indicated that he disbelieved the defence story but went on to make the following finding in his reasons for disbelieving the defence story. "There was no evidence at all that the appellant ever went to the office during those six months to look for the complainant in order to collect his commission." The appellant had in fact given such evidence. Secondly, the learned District Judge observed that Tan Hong Seng had not been called as a witness for the defence and said "If the defence story was true then Tan Hong Seng could have corroborated it in material particulars."

**Held:** (1) there is no duty cast upon the defence in a criminal trial to call any evidence and no inference unfavourable to him can be drawn if he chooses not to offer evidence. The learned District Judge appeared to have drawn an unfavourable inference because Tan Hong Seng was not called as a defence witness;

(2) there was a misdirection on the part of the learned District Judge in requiring corroboration of the defence story, and therefore the appeal must be allowed.

*Case referred to:—*

(1) *Goh Ah Yew* v. *Public Prosecutor* [1949] M.L.J. 150, at p.153.

MAGISTRATE'S CRIMINAL APPEAL.

*L. Rayner* for the appellant.

*Donald Yeo* (Deputy Public Prosecutor) for the Crown.

*Cur. Adv. Vult.*

**Winslow J.:** Counsel for the appellant, Mr. Leslie Rayner, preferred 8 grounds of appeal against the conviction and sentence of six months imprisonment of the appellant on a charge of corruption under section 6(a) of the Prevention of Corruption Ordinance, 1960 (No. 39 of 1960). The appellant was a police officer attached to the Mobile Squad of the Traffic Police and the allegation against him was that he had corruptly obtained $20 as a reward for forbearing to take action against one Tan Geok Leng who had been riding a motor-scooter without "L" plates whilst holding a provisional licence.

There is little doubt that the appellant

received $20 from Tan Geok Leng. The only question is whether he received the $20 as a corrupt gift as claimed by the complainant or as a commission for having found a buyer for the motor-scooter alleged by the defence to belong to one, Tan Hong Seng. According to the appellant the complainant had asked him to find buyers for motor-scooters for which he would be paid a commission.

The learned District Judge found that "the defence had failed to rebut the case made out against the appellant." He did not believe the defence story because in his opinion it was completely untrue. Having said this the learned District Judge unfortunately, in the course of his analysis of the reasons for his disbelieving the defence story made the following finding, "There was no evidence at all that the appellant ever went to the office during those six months to look for the complainant in order to collect his commission." This is contradicted by the evidence of the appellant himself who said that he had been to the complainant's office three or four times during that period prior to the day in question. Even counsel for the Crown, who made forceful and somewhat tenable submissions on the other grounds of appeal, was unable but to concede that this was a serious misdirection.

The learned District Judge then went on to say that Tan Hong Seng was not called as a witness by the defence. He then proceeded to say "If the defence story was true then Tan Hong Seng could have corroborated it in material particulars." He further said that Tan Hong Seng could have given very useful evidence for the defence on two points.

It seems to me that the learned District Judge allowed himself to be swayed by the failure of the defence to call Tan Hong Seng as a witness and misdirected himself in requiring corroboration of the defence story. I am not satisfied that he did not draw an inference adverse to the defence story from the fact that Tan Hong Seng had not been called as a defence witness under illustration (g), section 115 of the Evidence Ordinance which provides a presumption that—

"evidence which could be and is not produced would if produced be unfavourable to the person who withholds it."

It is clear from the authorities that there is no duty cast upon the defence in a criminal trial to call any evidence.

As Spenser-Wilkinson J. said in *Goh Ah Yew* v. *Public Prosecutor* [1]—

"There is no duty upon an accused to call any evidence. He is at liberty to offer evidence or not as he thinks proper and no inference unfavourable to him can be drawn because he adopts one course rather than the other."

It is only a short step from saying that if the defence story were true the evidence of a person who was not called as a witness could have corroborated it in material particulars to saying that if that person had been called as a witness he would not have corroborated the defence story.

In view of these misdirections I do not think it is desirable or necessary for me to deal with the remaining grounds except to say that, in my view, the complainant was not an accomplice as was argued by counsel for the appellant. I therefore allowed the appeal and quashed the conviction.

*Appeal allowed.*

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## MOHAMED IBRAHIM v. PUBLIC PROSECUTOR

**[A.Cr.J. (Thomson C.J.) January 18, 1963]**

**[Kuala Lumpur — Criminal Appeal No. 24 of 1962]**

*Criminal law—Possession of obscene book for purposes of sale—Test of obscenity—Penal Code, s.292.*

*Interpretation—Purpose of legislation—Penal Code s.292 to be interpreted strictly—Proof of knowledge unnecessary.*

The appellant who could not read English had in his possession 65 copies of the book, *Tropic of Cancer*, which was found under the counter of his shop by police officers on September 22, 1962. The copies together with others which had been sold were bought on September 8, 1962. The appellant was charged for having in his possession for purposes of sale 65 obscene books in contravention of section 292 of the Penal Code, and convicted on October 23, 1962. On November 8, there was published in the *Government Gazette* an Order by the Minister of the Interior under section 4 of the Control of Imported Publications Ordinance prohibiting the importation of the *Tropic of Cancer*.

On appeal, the appellant argued that (1) the book was not obscene; (2) the appellant was not in possession of the books for sale and (3) the appellant had no knowledge of the nature or contents of the books.

**Held:** (1) the test of obscenity is whether the tendency of the matter charged as obscenity is to deprave and corrupt those whose minds are open to such immoral influences and into whose hands a publication of this sort may fall: *R.* v. *Hicklin* [1] applied;

(2) as the book is priced at less than $3 and thus within the reach of the majority of the reading public and as it is calculated to convey and instil into the ordinary reader the impression that casual and frivolous indulgence of the sexual instinct is something of no importance and nothing more than a joke, the tendency is to deprave and corrupt, those whose minds are open to such immoral influences and into whose hands it may fall;

(3) on the evidence, the inference was irresistible that the books were for sale;

(4) as one object of section 292 of the Penal Code is to protect those members of the public who may be tempted to buy and so expose themselves to the corrupting influence of obscene books, that section must be